

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1
2 CONCEPCION TORRES SANTIAGO,

3 Plaintiff,

4 v.

5 VICTOR FAJARDO,

6 Defendant.
7
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CIVIL NO. 97-1183 (RLA)

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U.S. DISTRICT COURT
SAN JUAN, P.R.

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10 ORDER DISMISSING COMPLAINT

11 Plaintiff, a school teacher, instituted this action against
12 VICTOR FAJARDO, Secretary of the Puerto Rico Department of Education,
13 seeking damages for alleged due process and First Amendment
14 violations. Defendant has moved for summary disposition of the
15 claims which plaintiff has opposed. The Court having reviewed the
16 documents on file as well as the applicable law finds that dismissal
17 of the complaint is warranted.

18 **I. THE FACTS**

19 The following facts are uncontroverted.

20 Plaintiff, CONCEPCION TORRES SANTIAGO, is a tenured elementary
21 school teacher employed by the DEPARTMENT OF EDUCATION for
22 approximately 27 years.
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1 On October 13, 1994, a complaint was filed by MARISOL SANTIAGO
2 DE VALLADARES, mother of one of plaintiff's students, with the School
3 Superintendent for the region.

4 According to the allegations set forth by MRS. VALLADARES,
5 plaintiff had physically and emotionally abused complainant's
6 daughter as well as other students.

7 An initial investigation confirmed the allegations of physical
8 abuse.

9 On February 13, 1996, plaintiff was summarily suspended from
10 work with pay by VICTOR FAJARDO.

11 After her suspension plaintiff received wide support from
12 several sources, including most of her faculty colleagues.

13 On April 9, 1996 defendant reinstated plaintiff to her previous
14 position.

15 II. SUMMARY JUDGMENT STANDARD

16 The purpose of the summary judgment mechanism is to avoid
17 unnecessary trials by ascertaining whether material facts are in
18 dispute. In order to prevail at this stage of the proceedings
19 defendant herein, as movant, must establish the absence of relevant
20 facts in controversy and his entitlement to a judgment based on the
21 applicable law. Feliciano v. State of R.I., 160 F.3d 780 (1st Cir.
22 1998), Soto-Ocasio v. Fed. Express Corp., 150 F.3d 14 (1st Cir.
23 1998). See also Michelson v. Digital Fin. Services, 167 F.3d 715,
24 720 (1st Cir. 1999) (defendant may meet his burden "by pointing to the
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1 absence of adequate evidence supporting [plaintiff's] case.")
2 Plaintiff, on the other hand, cannot limit her role to pointing to
3 facts in controversy but must also present adequate evidence
4 substantiating each fundamental component of her claim. Hodgens v.
5 Gen. Dynamics, Inc., 144 F.3d 151, 158 (1st Cir. 1998); Fennell v.
6 First Step Designs, Ltd., 83 F.3d 526, 535 (1st Cir. 1996) (citing
7 Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91
8 L.Ed.2d 265 (1986)).

9 Summary judgment may be appropriate even in cases involving
10 discriminatory *animus* when the evidence of motive adduced by the
11 party opposing the motion hinges on unsupported conjectures. Angulo-
12 Alvarez v. Aponte de la Torre, 170 F.3d 246, 249 (1st Cir. 1999)
13 Hodgens, 144 F.3d at 167; Fennell, 83 F.3d at 535; Woods v. Friction
14 Materials, Inc., 30 F.3d 255, 259 (1st Cir. 1994); Medina Muñoz v.
15 R.J. Reynolds Tobacco Co., 896 F.2d 5,8 (1st Cir. 1990).

17 III. DUE PROCESS

18 The allegations in the complaint regarding due process are
19 limited to broad, generalized statements without any particular
20 reference to a property interest. The initial pleading merely
21 alleges plaintiff "was deprived of liberty interest in her job" and
22 that her reputation was damaged as a result of defendant's actions.
23 Complaint ¶ 17.

24 Only the existence of a constitutionally protected property
25 right or liberty interest will trigger the applicability of the due
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1 process clause. Accordingly, we will address these two issues
2 separately to determine whether or not plaintiff may demand due
3 process coverage under the facts of this case.

4 **A. Suspension with Pay**

5 In order to adequately claim a due process violation plaintiff
6 must identify the particular property interest which was adversely
7 affected by defendant's conduct. Rodriguez-Pinto v. Tirado-Delgado,
8 982 F.2d 34, 40 (1st Cir. 1993). "[A]n employee who has not been
9 terminated has not lost a property interest, and therefore ... cannot
10 claim a violation of his procedural due process rights." Cabrero v.
11 Ruiz, 826 F.Supp. 591, 597 (D.P.R. 1993) aff'd sub nom. Muniz-Cabrero
12 v. Ruiz, 23 F.3d 607 (1st Cir. 1994).

14 It is undisputed that plaintiff in this case was not terminated
15 from employment; she was merely suspended with pay. The suspension
16 was short-lived. It lasted less than two months. Plaintiff
17 continued to receive her salary uninterruptedly until reinstatement
18 to her former position. Further, there is no allegation that
19 plaintiff was deprived of any tangible property or benefits or that
20 her status as a teacher was somehow affected.

21 Although tenured teachers have a property right in continued
22 employment and may not to be terminated without being afforded due
23 process, Conward v. The Cambridge Sch. Comm., 171 F.3d 12 (1st
24 Cir. 1999) based on the foregoing we find that a brief suspension
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1 with pay¹ is not tantamount to a deprivation subject to due process
2 guarantees.

3 B. Liberty Interest

4 Plaintiff's claim for deprivation of liberty without due process
5 is equally flawed. The complaint at ¶ 10 reads:

6 Plaintiff's liberty interest was affected because the
7 suspension imposed a stigma that seriously damaged her good
8 name, reputation, honor or integrity as a school teacher
9 and has damaged [plaintiff's] ability to take advantage of
10 other employment opportunities in the future.

11 Therefore, defamation alone is not actionable. "Rather, the
12 reputational injury must be accompanied by a change in the injured
13 person's status or rights under substantive state or federal law."
14 Silva v. Worden, 130 F.3d 26, 32 (1st Cir. 1997); Romero-Barcelo v.
15 Hernandez-Agosto, 75 F.3d 23, 32 (1st Cir. 1996).

16 There is no evidence in the record pointing to impingement of
17 any tangible interest as a result of plaintiff's suspension. In her
18 deposition plaintiff indicated that she received strong support when
19 the news of her suspension were published. Plaintiff also admitted
20 that she had no problems at school since her reinstatement. Further,
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23 ¹ Suspension **with pay** was intimated by the Supreme Court as an
24 alternative route to avoid procedural demands. See Cleveland Bd. of
25 Ed. v. Lourdermill, 470 U.S. 532, 544-45, 105 S.Ct. 1487, 1495
26 (1985). Quare whether summary suspensions **without pay** are entitled
to due process protection. Gilbert v. Homar, 520 U.S. 924, 928, 117
S.Ct. 1807, 1811 (1997).

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her relations with the students, fellow teachers and staff has continued to be good and she has no desire to be transferred.

Accordingly, any possible repercussions deriving from plaintiff's suspension are not severe enough to warrant the application of the due process prerequisites.

IV. FIRST AMENDMENT

Plaintiff also claims infringement of her First Amendment rights in that her suspension was purportedly motivated by her political affiliation. Inasmuch as First Amendment claims are independent from a due process cause of action we shall proceed to examine this claim separately. See Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 56 (1st Cir. 1990) (lack of property interest does not automatically defeat political discrimination claim).

The only allegation regarding defendant FAJARDO in support of political discrimination pertains to a meeting held in his office to confirm plaintiff's reinstatement. According to plaintiff, during the meeting defendant gave her a pin with a star and a sticker - both emblematic of the Department of Education - which she perceived as a political insignia in support of the statehood movement which is not of her persuasion. Plaintiff concedes that no allusions to political preferences were made during the meeting and that this was the first and only time she ever met defendant. All plaintiff has presented to prove political discrimination is her "perception" of the events

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1 during the meeting without any independent concrete factual basis.²
2 The other evidence cited by plaintiff in support of her
3 discrimination claim are references to the alleged political clout of
4 the mother who subscribed the letter charging her with child abuse.
5 There is, however, no evidence connecting the defendant with this
6 person.

7 In a political discrimination action, plaintiff bears the
8 initial burden of producing sufficient evidence from which the trier
9 of fact may reasonably infer that political affiliation was a
10 substantial or motivating factor behind the adverse personnel action.
11 Angulo-Alvarez, 170 F.3d at 249; Rodriguez-Rios v. Cordero, 138 F.3d
12 22, 24 (1st Cir. 1998); Jirau-Bernal v. Agrait, 37 F.3d 1, 3 (1st Cir.
13 1994); Larou v. Ridlon, 98 F.3d 659, 661 (1st Cir. 1996); Ortiz-Piñero
14 v. Rivera-Arroyo, 84 F.3d 7, 12 (1st Cir. 1996); Rivera-Cotto v.
15 Rivera, 38 F.3d 611, 614 (1st Cir. 1994).

17 The burden then shifts to the defendant to articulate legitimate
18 nondiscriminatory reason(s) for the challenged acts and to prove by
19 a preponderance of the evidence that the adverse action would have
20 been taken without regard to political affiliation. Angulo-Alvarez,
21 170 F.3d at 249; Rodriguez-Rios, 138 F.3d at 24; Larou, 98 F.3d at
22 661; Ortiz, 84 F.3d at 12.

24 ² Plaintiff also mentions a subsequent investigation in support
25 of her claim. However, this event by itself is not probative of
26 political discrimination absent any other relevant evidence of
motive.

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1 To avoid summary judgment, the evidence presented by plaintiff
2 must establish that political affiliation was a substantial or
3 motivating factor behind the challenged action. Rivera-Cotto, 38
4 F.3d at 614. Unsubstantiated allegations without evidence of
5 discrimination will not preclude summary judgment. Rivera-Cotto, 38
6 F.3d at 614 (unsupported and speculative assertions of political
7 discrimination insufficient to defeat summary judgment). On the
8 other hand, summary judgment will be granted if defendant's evidence
9 compels a finding that political affiliation did not motivate the
10 adverse action taken.

11 The record is devoid of any evidence establishing political
12 *animus* in this case. Only plaintiff's groundless conjectures appear
13 in the record in opposition to the summary judgment request. On the
14 other hand, defendant has submitted ample support for the suspension.
15 The preliminary investigation had first hand accounts of children
16 complaining of physical abuse as well as references to testimony of
17 the previous school director confirming these events. In view of
18 this information it is reasonable to conclude that the public
19 interest in safeguarding the welfare of young students in the
20 classroom amply justified defendant's action without regard to her
21 political affiliation.
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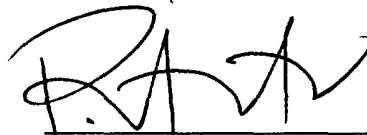
CONCLUSION

Based on the foregoing, defendant's Motion for Summary Judgment (docket No. 34) is **GRANTED**³ and the complaint filed in this case is hereby **DISMISSED**.⁴

Judgment shall be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 17th day of September, 1999.



RAYMOND L. ACOSTA

United States District Judge

³ See Memorandum of Law in Opposition... (docket No. 35) and Reply... (docket No. 36) filed by defendant.

⁴ Because we find dismissal is warranted there is no need to address defendant's request for qualified immunity protection.